

CAUSE NO. D-1-GN-19-007307**JUSTIN WAYNE LaPREE**
Plaintiff

V.

BRINK BENNETT FLAHERTY
GOLDEN, PLLC AND RHONDA H.
BRINK
Defendants§ **IN THE DISTRICT COURT OF**
§
§
§ **TRAVIS COUNTY, TEXAS**
§
§
§ 200TH
§ **JUDICIAL DISTRICT COURT****PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE COURT JUDGE OF SAID COURT:

Plaintiff, Justin Wayne LaPree, complains of Defendants, Brink Bennett Flaherty Golden, PLLC f/k/a Brink Bennett Flaherty, PLLC and Rhonda H. Brink, and files this Original Petition and Request for Disclosure, and in support thereof, would respectfully show as follows.

I
DISCOVERY CONTROL PLAN

1. Based upon this Petition, this case should be controlled by a discovery control plan Level 3 pursuant to the Texas Rules of Civil Procedure, Rule 190.4.

II
RULE 47 STATEMENT OF RELIEF

2. In accordance with Texas Rule of Civil Procedure 47, Plaintiff seeks monetary relief in excess of \$1,000,000. This is not an expedited action.

III
PARTIES

3. Plaintiff, Justin Wayne LaPree, is an individual residing in Travis County, Texas. The last three digits of his social security number are 939. The last three digits of his Texas drivers license are 955.

4. Defendant, Brink Bennett Flaherty Golden, PLLC, formally known as Brink Bennett Flaherty, PLLC, is a professional limited liability corporation formed in the State of Texas with its principle office in Travis County, Texas and may be served with citation through its registered agent, Jason Roy Flaherty, at 7800 North Mopac, Suite 200, Austin, Texas 78759, or wherever he may be found.

5. Defendant, Rhonda H. Brink, is an attorney licensed to practice law in the State of Texas and may be served with citation at her principle place of business, Brink Bennett Flaherty Golden, PLLC, 7800 North Mopac, Suite 200, Austin, Texas 78759, or wherever she may be found.

IV JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition arose, in whole or in part, in Texas and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

7. This Court has personal jurisdiction over each Defendant because the acts and/or omissions complained of herein occurred in Texas, each Defendant does business in Texas and/or committed a tort, in whole or in part in Texas.

8. Venue is properly laid in Travis County, Texas because all or a substantial part of the events or omissions giving rise to the claim occurred in Travis County, Texas and/or because Defendants reside in or have a principle office in Travis County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1), (2) and (3).

V
FACTUAL BACKGROUND

9. This is a legal malpractice lawsuit against Brink Bennett Flaherty Golden, PLLC, formally known as Brink Bennett Flaherty, PLLC (“BBFG”), and Rhonda H. Brink (“Brink”) relating to apparent errors occurring in the estate planning context which led to a dispute within an underlying divorce proceeding.

10. Plaintiff, Justin Wayne LaPree (“Justin”) and Kelly Marie LaPree (“Kelly”) were married on September 8, 2012 and have two children together. Kelly is a stay-at-home mom and Justin is a firefighter. Kelly is the beneficiary of three trusts created by her grandparents from which she inherited approximately \$2.3 million when she turned 32 on April 16, 2017.

11. In June of 2017, Justin and Kelly jointly retained Brink and BBFG (“Defendants”) to prepare estate planning documents, wills, trusts, and “collateral personal management-documents.” Justin and Kelly made clear to Brink that they considered all current assets, including the \$2.3 million inheritance, to be community property. Brink reiterated this intent in her notes, stating: “The wealth is the \$2.3 million of trusts that ended when Kelly turned 32. We discussed divorce, death and separate property characterization. [Kelly] chooses to treat this ‘tranche’ as community / joint property – maybe not for future tranches.”

12. Brink confirmed this intent in an engagement letter dated June 26, 2017, and that letter was signed by both Justin and Kelly. Brink promised to prepare the necessary documents to effectuate the conversion of any separate property, such as Kelly’s inheritance, into community property as instructed. Thus, Brink prepared the Justin Wayne LaPree and Kelly Marie LaPree Revocable Living Trust (“LaPree Trust”). The LaPree Trust was signed by Justin and Kelly on October 25, 2017. An account with Charles Schwab was set up to maintain the LaPree Trust assets ending in 9339. Brink represented that the LaPree Trust was sufficient to accomplish the

goal of converting Kelly's separate property of \$2.3 million from the premarital inheritance into community property. Justin relied on these representations.

13. From December 2017 to March 2018, assets were transferred from the premarital trusts into the LaPree Trust pursuant to the parties' intent to treat the inheritance as community property.

14. On August 24, 2018, Kelly filed for divorce. *See* Cause No. D-1-FM-18-005200; *In the Matter of Marriage of Kelly M. LaPree and Justin W. LaPree*; In the 250th Judicial District Court of Travis County, Texas (the "Divorce Case"). In the Divorce Case, Kelly moved for summary judgment arguing that the assets in the Charles Schwab account 9339 titled in the name of the LaPree Trust were her separate property and that she did not gift this property to Justin. Justin has incurred more than \$200,000 in attorney's fees garnering discovery and combating these issues on summary judgment.

15. One of the depositions taken was of Brink. During her deposition, Brink admitted that she had been jointly retained by Justin and Kelly, although she testified in Kelly's favor. Specifically, when asked whether she understood that Justin and Kelly wanted to convert Kelly's separate property to community property, Brink testified "From the explanation I gave and discussions we had, I did not understand that either of them were trying to change the character of what they had." Brink's failure to understand this fact considering the instructions she was given as reflected in her notes and the engagement agreement is an admission of negligence on its face.

16. On May 7, 2019, the trial judge in the Divorce Case granted summary judgment against Justin, concluding that the LaPree Trust did not constitute an agreement to convert separate property to community property because it does not meet the requirements of Texas

Family Code § 4.203 and that the creation of the LaPree Trust and the titling of the Charles Schwab account did not constitute gifts by Kelly of her separate property to Justin or the community estate.

17. Justin disagrees with the trial court and believes that evidence exists which demonstrates that Kelly transferred, converted and gifted the \$2.3 million premarital inheritance into community property. However, in light of the trial court's rulings, Brink and BBFG failed to draft the appropriate estate planning and collateral personal management-documents to properly convert or gift the \$2.3 million in premarital inheritance into community property. This failure has caused Justin to incur more than \$200,000 in litigation costs and attorney's fees and, in the event the ruling of the trial court becomes final, will have deprived Justin of more than \$1,150,000.

VI STATEMENT OF CLAIMS

18. Therefore, it has become necessary to bring this suit to collect a legal debt of money damages owing to Plaintiff due to the Defendants' conduct. Defendants' actions constitute negligence.

19. Plaintiff incorporates those facts set forth above as if recited herein verbatim. In addition to the allegations outlined above, the following errors and/or omissions by Defendants in the underlying representation constitute negligence:

- Failure to protect Plaintiff's interest;
- Failure to properly and diligently represent Plaintiff;
- Failure to draft the appropriate estate planning and collateral personal management-documents to properly convert or gift the \$2.3 million in premarital inheritance into community property;
- Failure to properly outline the scope of representation; and

- Failure to adequately advise Plaintiff to retain another attorney to draft the appropriate estate planning and collateral personal management-documents to properly convert or gift the \$2.3 million in premarital inheritance into community property.

20. Of course, nothing Plaintiff did, or failed to do, caused or in any way contributed to cause the occurrences that resulted in losses and damages to Plaintiff. On the contrary, the Defendants fell below the standard of care for attorneys practicing law in Texas, and thus, Defendants' conduct was a proximate and/or producing cause of Plaintiff's losses and damages.

VII DAMAGES

21. Regarding the causes of action and conduct alleged above, Plaintiff has sustained pecuniary losses that were proximately caused by Defendants' conduct. Plaintiff hereby seeks the maximum allowable of actual damages that are within the jurisdictional limits of this court in excess of \$1,000,000. These damages include \$1,150,000, which is one half of what should have been characterized as community property pursuant to the instructions given to Defendants. Additionally, Plaintiff has incurred more than \$200,000 in attorney's fees litigating the issues relating to the documents drafted by Defendants.

VIII DISCOVERY & TOLLING RULE

22. To the extent necessary, Plaintiff affirmatively pleads the discovery rule and/or the *Hughes* tolling rule to any defense of limitations asserted by Defendants regarding any of Plaintiff's causes of action.

IX JOINT LIABILITY

23. At all times material hereto, Defendants represented Plaintiff in the legal matters described herein. At all times material hereto, all of the specific acts complained of herein are

attributable to the conduct of the individual attorneys associated with their respective law firms as partners, agents, servants, representatives and/or employees. Thus, the liability and responsibility of Defendants is vicarious, joint and several. Plaintiff further pleads the legal theory of *respondeat superior* as between the individual lawyers named herein and their law firms for which they practice law under.

**X
JURY DEMAND**

24. Plaintiff desires to have a jury decide this case and makes this formal request pursuant to Texas Rule of Civil Procedure 216. This request is filed more than thirty days before this case has been scheduled for trial and all fees have been (or will be) paid.

**XI
REQUEST FOR DISCLOSURE**

25. Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Texas Rule of Civil Procedure 194.2.

**XII
NOTICE OF INTENT TO USE PRODUCED DOCUMENTS**

26. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, each party is hereby given notice of Plaintiff's intent to use any and all documents produced by any party.

**XIII
PRAYER**

WHEREFORE, Plaintiff prays that after trial herein, that judgment be entered against Defendants jointly and severally as prayed for, that costs of court be taxed against Defendants, that Plaintiff be given prejudgment as well as post judgment interest, and for such other and further relief, at law and in equity to which Plaintiff may show herself to be justly entitled.

Respectfully submitted,

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